

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION

HERBERT LEE BELL,)	Civil Action No.: 4:07-cv-4115-RBH
)	
Petitioner,)	
)	
v.)	ORDER
)	
WARDEN, Lee Correctional Institution,)	
)	
Respondent.)	
)	

Petitioner, currently incarcerated at Lee Correctional Institution in Bishopville, South Carolina, brought this action seeking a writ of habeas corpus pursuant to 28 U.S.C. § 2254.

Pending before the court is Respondent's [Docket Entry #9] motion for summary judgment filed on February 22, 2008. This matter comes before the court with the Report and Recommendation [Docket Entry #19] of Magistrate Judge Thomas E. Rogers, III, filed on June 17, 2008.¹

The Magistrate Judge recommended that summary judgment be granted in favor of the Respondent and that Petitioner's petition be dismissed. Petitioner filed objections [Docket Entry #21] to the Magistrate Judge's Report and Recommendation on June 25, 2008.

Petitioner was indicted and tried *in absentia* to trafficking in crack cocaine. Petitioner was sentenced to twenty-five years imprisonment and a one-hundred thousand (\$100,000.00) dollar fine. In the instant petition, Petitioner alleges ineffective assistance of counsel as his sole ground for relief.

After finding that Petitioner's state post-conviction relief (PCR) application was still

¹ This matter was referred to Magistrate Judge Rogers pursuant to 28 U.S.C. § 636(b)(1)(B), and Local Civil Rule 73.02.

pending in state court, the Magistrate Judge recommended that summary judgment be granted and that Petitioner's petition for writ of habeas corpus be dismissed without prejudice for failure to exhaust state court remedies. The Magistrate Judge also recommended that all remaining motions be denied.

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight. The responsibility to make a final determination remains with this court. *Mathews v. Weber*, 423 U.S. 261, 270 (1976). The court is charged with making a *de novo* determination of those portions of the report and recommendation to which specific objection is made, and the court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge, or recommit the matter to him with instructions. 28 U.S.C. § 636(b)(1). However, the district court need not conduct a *de novo* review when a party makes only general and conclusory objections that do not direct the court to a specific error in the Magistrate Judge's proposed findings and recommendations. *Orpiano v. Johnson*, 687 F.2d 44, 47-48 (4th Cir. 1982).

Having reviewed the record and applicable law, the court agrees with the recommendations of the Magistrate Judge and finds that the Magistrate Judge correctly applied the law to the facts of this case. The court has reviewed Petitioner's objections and finds that they are without merit. Specifically, to the extent that Petitioner claims that exhaustion would be futile or unnecessary, Petitioner has made an insufficient showing necessary to excuse the exhaustion requirement.

Accordingly, the court overrules Petitioner's objections and adopts and incorporates by reference the Report and Recommendation [Docket Entry #19] of the Magistrate Judge.

Respondent's [Docket Entry #9] motion for summary judgment is **GRANTED**. This case is hereby **DISMISSED without prejudice**.

IT IS SO ORDERED.

Florence, South Carolina
June 30, 2008

s/ R. Bryan Harwell
R. Bryan Harwell
United States District Judge